

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Debt Collector
Application of Ryan Dasalla

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Barbara L. Neilson at 9:30 a.m. on March 2, 2011, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota. The OAH record closed at the conclusion of the hearing.

Christopher M. Kaisershot, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). Ryan Dasalla (Applicant) appeared on his own behalf without counsel.

STATEMENT OF ISSUES

1. Is the Applicant ineligible for registration as a debt collector because of his 2007 conviction for Domestic Battery (enhanced) as a Class 4 Felony, pursuant to Minn. Stat. § 332.35?
2. Did the Applicant provide false, misleading or incomplete information to the Commissioner in violation of Minn. Stat. § 45.027, subd. 7(a)(3)?
3. Did the Applicant engage in acts or practices which demonstrate that he is untrustworthy or otherwise incompetent or unqualified to act under the authority or license granted by the Commissioner, pursuant to Minn. Stat. § 45.027, subd. 7(a)(4)?
4. If so, should his application for registration as a debt collector be denied?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On May 25, 2010, the Applicant, Ryan Dasalla, submitted an application for registration as a debt collector. The Applicant indicated on his application that his registration would be in association with Van Ru Credit Corporation (VRCC), a licensed collection agency.¹

2. The first question on the application asks whether the applicant has ever been convicted of or charged with a crime. If an applicant answers in the affirmative, he or she is required to submit a written statement about each crime and provide the Department with specific documentation, including certified copies of the charging document and other documents that would reflect the resolution of the charges or final judgment.²

3. The Applicant confirmed that he had a criminal history and he provided the following information in response to the question on his application: "1998 Domestic Battery, 2002 Domestic Battery, 2004 Aggravated Battery, 2008 Domestic Battery."³ The Applicant did not provide the Department with any of the required documentation concerning his criminal history. As a result, the Department considered his application to be incomplete and "pending."⁴

4. On November 9, 2010, the Department sent an email to VRCC informing it that if the Applicant's required documentation was not provided by November 30, 2010, the Department would consider his application to be withdrawn.⁵

5. On November 11, 2010, VRCC faxed to the Department 18 pages of documentation concerning the Applicant's criminal history. Included in the facsimile were the following documents: orders relating to charges and convictions from 1996, including a conviction for resisting arrest, that the Applicant did not disclose on his application; an order relating to the Applicant's 1998 Domestic Battery conviction; an order relating to the Applicant's 2007 conviction of Domestic Battery (Enhanced) as a Class 4 Felony, which the Applicant did not disclose on his application; a computer print-out of court appearances relating to the Applicant's 2007 Domestic Battery; and charging documents relating to the 2007 Domestic Battery. No documentation was provided concerning the 2002 Domestic Battery or the 2004 Aggravated Battery that the Applicant disclosed on his application.⁶

¹ Ex. 1; Testimony of Cheryl Costello. Debt collectors affiliate with a licensed collection agency and become registered under that agency's license.

² Ex. 1.

³ Ex. 1.

⁴ Test. of C. Costello.

⁵ Ex. 2.

⁶ Ex. 3.

6. Under Minnesota law, no debt collector registration shall be issued to any person convicted of “any felony” in the past five years.⁷

7. By letter dated November 15, 2010, Cheryl Costello, a senior investigator with the Department, notified the Applicant that he was ineligible for registration as a debt collector because, among other reasons, he had been convicted of a felony within the past five years. Ms. Costello informed the Applicant of his right to request a hearing to appeal the Department’s determination.⁸

8. On November 22, 2010, the Applicant called Ms. Costello to discuss the Department’s decision to deny his application. The Applicant told Ms. Costello that he felt the Department’s decision was unfair because his domestic battery felony conviction is unrelated to debt collecting work.⁹

9. On December 13, 2010, the Applicant requested an administrative hearing to appeal the Department’s denial of his application.¹⁰

10. On January 7, 2011, the Department issued a Notice and Order for Hearing in this matter. The contested case proceeding followed from that Order.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Applicant under Minn. Stat. §§ 14.50, 45.027, subd. 7(b), and 332.40.

2. The Applicant received due, proper, and timely notice of the charges against him, and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

4. The burden of proof in this proceeding is on the Applicant to show by a preponderance of the evidence that he should be granted registration.¹¹

5. No debt collector registration shall be accepted for, and no license shall be issued to, any person who has been convicted in any court of any felony within the past five years.¹²

⁷ Minn. Stat. § 332.35.

⁸ Ex. 4.

⁹ Ex. 5; Test. of C. Costello.

¹⁰ Ex. 6.

¹¹ Minn. R. 1400.7300, subp 5.

6. The Respondent is ineligible for registration as a debt collector based on his 2007 felony conviction for Domestic Battery (enhanced).

7. The Commissioner may deny, suspend, revoke the authority, or levy a civil penalty if an applicant or licensee provides false, misleading, or incomplete information in the application.¹³

8. The Applicant provided incomplete or misleading information on his application in violation of Minn. Stat. § 45.027, subd. 7(a)(3), by failing to disclose on his application his 1996 conviction for resisting arrest and his 2007 felony domestic battery conviction.

9. The Commissioner may deny, suspend, revoke the authority, or levy a civil penalty if the applicant or licensee engages in an act of practice, whether or not the act or practice directly involves the business for which the person is authorized, which demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the Commissioner.¹⁴

10. The Applicant's convictions of misdemeanor and felony domestic battery demonstrate that he is untrustworthy or otherwise incompetent or unqualified to act under the authority or license granted by the Commissioner.¹⁵

11. Minn. Stat. § 45.027, subd. 10, specifies that "Chapter 364 [relating to rehabilitation of those convicted of crimes] does not apply to an applicant for a license ... where the underlying conduct on which the conviction is based would be grounds for denial of the license."

12. The underlying conduct on which the Applicant's convictions of felony domestic battery demonstrates that the Applicant is untrustworthy or otherwise incompetent or unqualified to act as a debt collector, and that it would be in the public interest to deny the Applicant's license application. To the extent that the application denial is based upon the Applicant's prior criminal conviction, that conviction relates directly to the occupation for which the license is sought under Minn. Stat. § 364.03, subds. 1 and 2, due to the nature of the crime and the relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation. The occupation of a debt collector requires composure and level-headedness in what may be tense and confrontational encounters. The Applicant's multiple convictions for domestic battery demonstrates a pattern of volatile behavior and an inability to control anger and maintain composure that makes him unfit to handle the responsibilities of debt collecting.

13. Denial of the Applicant's debt collector application is in the public interest.

¹² Minn. Stat. § 332.35.

¹³ Minn. Stat. §§ 45.027, subd. 7(a)(3).

¹⁴ Minn. Stat. § 45.027, subd. 7(a)(4).

¹⁵ Minn. Stat. § 45.027, subd. 7(a)(4).

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED: that the Commissioner of the Department of Commerce AFFIRM the denial of Ryan Dasalla's application for registration as a debt collector.

Dated: March 17, 2011.

s/Barbara L. Neilson

BARBARA L. NEILSON

Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Emmanuel Munson-Regala, Deputy Commissioner, Market Assurance Division, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes. To comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

Minnesota Statutes § 332.35 prohibits the Commissioner from issuing a debt collector registration to a person convicted of “any felony” in the past five years. The Applicant was convicted of felony level domestic battery in 2007. Because less than five years have passed since that conviction, the Applicant is ineligible for registration as a debt collector as a matter of law.

Moreover, the Commissioner has the authority to deny an application for registration as a debt collector if an applicant provides incorrect or incomplete information in the application.¹⁶ The Applicant in this case failed to provide information on his application regarding his 1996 and 2007 criminal convictions. Because the Applicant provided incomplete and incorrect information on his application, the Commissioner may deny his application for registration as a debt collector. Finally, the Commissioner may deny an application if the applicant engages in acts which demonstrate that the applicant is untrustworthy or otherwise incompetent to act under the authority granted by the Commissioner. Here, the Applicant’s multiple convictions for domestic battery demonstrate that he is untrustworthy or otherwise incompetent to act under the authority granted by the Commissioner.

Chapter 364 of the Minnesota Statutes declares that “it is the policy of the state of Minnesota to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the resumption of the responsibilities of citizenship” and notes that the “opportunity to . . . engage in a meaningful and profitable . . . occupation . . . is essential to rehabilitation and the resumption of the responsibilities of citizenship.”¹⁷ Chapter 364 generally states that a person cannot be disqualified from pursuing a licensed occupation due to prior conviction of a crime unless the crime directly relates to the occupation for which the license is sought.¹⁸ If the crime is, in fact, directly related to the occupation for which a license is sought, the person cannot be disqualified if he or she can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the occupation.¹⁹

Minnesota Statutes § 45A.027, subd. 10, states, however, that Chapter 364 does not apply to an applicant where the underlying conduct on which the conviction was based would be grounds for denial of the license. Although this language is somewhat unclear, it appears to reflect legislative intent that an applicant for Commerce Department licensure who has committed a crime that directly relates to the licensed occupation cannot provide evidence of rehabilitation to overcome a disqualification from licensure.

The Administrative Law Judge concludes that the Applicant’s criminal convictions do relate directly to the occupation for which registration is sought. The occupation of a debt collector requires composure and level-headedness in what may be tense and

¹⁶ Minn. Stat. § 45.027, subd. 7(a)(3).

¹⁷ Minn. Stat. § 364.01.

¹⁸ Minn. Stat. § 364.03, subd. 1.

¹⁹ Minn. Stat. § 364.03, subd. 3.

confrontational encounters. The Applicant's multiple convictions for domestic battery demonstrates a pattern of volatile behavior and an inability to control anger and maintain composure that makes him unfit to handle the responsibilities of debt collecting. In addition, the Applicant also failed to disclose on his application all of his criminal convictions and he did not submit all of the documentation required to the Department to process his application. By providing incomplete or incorrect information on his application, the Applicant violated Minn. Stat. §§ 45.027, subd. 7(3) and (4).

The Applicant testified at the hearing that since his 2007 felony conviction, he has undergone anger management and domestic abuse counseling. He also pointed out that he has not had any additional criminal conviction since 2007. While the counseling and lack of additional convictions is evidence that the Respondent is taking steps in the right direction, it is not sufficient to demonstrate present fitness or to preclude his disqualification.

For all of these reasons, the Administrative Law Judge recommends that the Commissioner affirm the denial of Ryan Dasalla's application for registration as a debt collector.

B.L.N.